

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED

MAY - 1 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition for Rulemaking of the
Telecommunications Resellers Association to
Eliminate Comity-Based Enforcement of Other
Nations' Prohibitions Against Uncompleted
Call Signaling Configuration of International
Call-Back Service

File No. RM-9249

COMMENTS OF USA GLOBAL LINK, INC.

The World Trade Organization Agreement on Basic Telecommunications ("WTO Basic Telecom Agreement") has rendered obsolete—and is inconsistent with—the Commission's comity-based enforcement of other nations' prohibitions against international call-back services that use uncompleted call signaling. As the above-referenced petition of the Telecommunications Resellers Association ("TRA") points out, the WTO Basic Telecom Agreement—as well as the Commission's own market-opening and liberalization measures—has ushered in a new era of global competition in international telecommunications which reinforces and propagates pro-competitive and transparent regulatory policies.¹ Commission enforcement of other nations' anticompetitive measures and barriers to market entry is wholly inconsistent

¹ Petition for Rulemaking of the Telecommunications Resellers Association to Eliminate Comity-Based Enforcement of Other Nations' Prohibitions Against Uncompleted Call Signaling Configuration of International Call-Back Service of the Telecommunications Resellers Association, File No. RM-9249 (filed March 19, 1998) ("TRA Petition").

No. of Copies rec'd 074
List A B C D E

with these changes and serves only to undermine liberalization which the Commission itself pioneered. USA Global Link therefore supports the TRA Petition to eliminate comity-based enforcement of other nations' prohibitions on call-back services that use uncompleted call signaling.

The Commission issued its *Call-back Orders*² in the twilight of the monopoly era in international telecommunications. In that era, there was no international agreement or enforcement mechanism to ensure the development and proliferation of pro-competitive policies. It was during this period that the Commission authorized call-back services that use uncompleted call signaling. The Commission found that

Call-back advances the public interest, convenience and necessity by promoting international competition in international markets and driving down international phone rates. We believe it is in the best interests of consumers—and eventually of economic growth—around the world.³

While endorsing call-back using uncompleted call signaling, the Commission noted that its authorization of such services “does not address the legality of the proposed activities under foreign law, which is a matter for foreign authorities and courts to decide.”⁴

The Commission's conclusions regarding extraterritorial legality were driven by concerns about reciprocity. Without an international framework for formulating and enforcing pro-competitive regulatory principles, the Commission relied on a traditional bilateral means for furthering its own objectives:

² *VIA USA, Ltd., Order Authorization & Certificate*, 9 FCC Rcd 2288 (1994) (“*Call-back Order*”); *Order on Reconsideration*, 10 FCC Rcd 9540 (1995) (“*Call-back Reconsideration Order*”) (collectively, “*Call-back Orders*”).

³ *Call-back Reconsideration Order*, 10 FCC Rcd at 9540.

⁴ *Call-back Order*, 9 FCC Rcd at 2292.

We therefore find, as a matter of international comity, that the Commission should prohibit carriers authorized to provide call-back service utilizing uncompleted call signaling from providing this offering in countries where it is expressly prohibited. *We would expect no less from foreign governments in similar circumstances.*⁵

The Commission hoped to trade limited enforcement of certain foreign laws and regulations in exchange for enforcement abroad of its own rules and policies with respect to international telecommunications. Even so, the Commission intended to pursue comity-based enforcement only where “warranted by exceptional circumstances.”⁶

The need for such horse-trading to ensure the viability of the Commission’s policies has evaporated because the monopoly era in international telecommunications—in spite of substantial remaining barriers—has effectively ended. Shortly after the adoption of the *Call-back Orders*, the Commission itself began to implement its vision of a pro-competitive regime in international telecommunications—a vision only accelerated by the Telecommunications Act of 1996. In its proceeding regarding market entry of foreign and foreign-affiliated carriers, the Commission set forth its three goals for its regulation of the U.S. international telecommunications market: “(1) to promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and (3) to encourage foreign governments to open their communications

⁵ *Call-back Reconsideration Order*, 10 FCC Rcd at 9557 (emphasis added). The Commission also found that where a foreign nation’s enforcement efforts against a U.S. international carrier failed, the Commission would entertain the possibility of taking action against that carrier in the United States. *Id.* at 9557-58.

⁶ *Id.* at 9557.

markets.”⁷ Commission enforcement of anticompetitive foreign restrictions on call-back services undermines all three of these goals. Conversely, the Commission’s market-opening efforts contributed to, and were bolstered by, the WTO Basic Telecom Agreement, an international agreement enshrining the pro-competitive principles and transparent regulatory procedures pioneered by the Commission.⁸

The WTO Basic Telecom Agreement establishes an international regime for regulation of basic telecommunications services, a category which includes call-back services that use uncompleted call signaling. That agreement supplants many existing national policies aimed at ensuring that other nations’ regulatory efforts did not impede liberalization of trade in international telecommunications services. Thus, the United States can rely on the WTO Basic Telecom Agreement as a means for furthering its pro-competitive objectives abroad without fear of treading on other nations’ sovereign acts. The WTO Basic Telecom Agreement also signals to those nations who have not made offers—or made only limited ones—to liberalize their telecommunications services markets that WTO members such as the United States will seek to spread the pro-competitive principles and regulatory procedures embodied in that agreement. Comity-based enforcement of other nations’ anticompetitive and protectionist measures would undermine the very basic premises of the WTO Basic Telecom Agreement.

⁷ *Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order*, 11 FCC Rcd 3873, 3877 (1995).

⁸ *See* Annex on Telecommunications, art. 2, of the General Agreement on Trade in Services, annexed to Marrakesh Agreement Establishing the World Trade Organization, Annex 1B (Apr. 15, 1994), *reprinted in* 33 I.L.M. 1167 (1994); Fourth Protocol to the General Agreement on Trade in Services, WTO Doc. S/L/20 (Apr. 30, 1996), *reprinted in* 36 I.L.M. 366 (1997); Report of the Group on Basic Telecommunications, WTO Doc. S/GBT/4 (Feb. 15, 1997).

The United States has never recognized a legal imperative requiring comity-based enforcement of other nations' prohibitions against call-back services, and the policy imperative, to the extent one existed, has disappeared under the new WTO regime. As the Commission has noted repeatedly, the comity doctrine "is a discretionary means for U.S. courts and agencies to take account of foreign sovereign acts, and therefore is distinct from obligations under international law."⁹ International regulatory developments have now superseded the old, reciprocity-based regulatory regime in international telecommunications, and the Commission's policy of comity-based enforcement should be discarded along with that old regime.

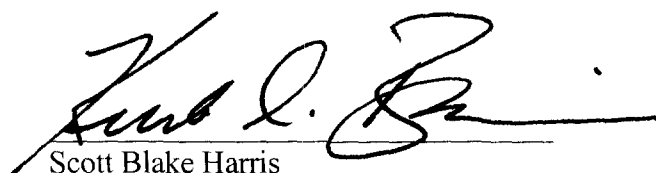
⁹ *Call-back Reconsideration Order*, 10 FCC Rcd at 9556-57.

CONCLUSION

For the foregoing reasons, the Commission should grant TRA's petition to eliminate comity-based enforcement of other nations' prohibitions against international call-back services that use uncompleted call signaling. The WTO Basic Telecom Agreement has rendered obsolete—and is indeed inconsistent with—comity-based enforcement because it institutionalizes on an international level, and provides an enforcement mechanism for, pro-competitive and transparent regulatory policies in basic telecommunications.

Respectfully submitted,

USA GLOBAL LINK, INC.



Scott Blake Harris
William M. Wiltshire
Kent D. Bressie
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 730-1300

Daniel J. Hartnett
Christopher M. Murphy
MCDERMOTT, WILL & EMERY
227 West Monroe Street
Chicago, Illinois 60606-5090
(312) 372-2000

Dated: May 1, 1998

Attorneys for USA Global Link, Inc.

CERTIFICATE OF SERVICE

I, Kent D. Bressie, do hereby certify that copies of the foregoing Comments of USA Global Link, Inc., have been sent by hand delivery, on this 1st day of May, 1998, to the following:

Diane J. Cornell
Chief, Telecommunications Division
International Bureau
FEDERAL COMMUNICATIONS COMMISSION
2000 M Street, N.W., Room 838
Washington, D.C. 20554

Troy F. Tanner
Chief, Policy & Facilities Branch
Telecommunications Division
International Bureau
FEDERAL COMMUNICATIONS COMMISSION
2000 M Street, N.W., Room 849
Washington, D.C. 20554

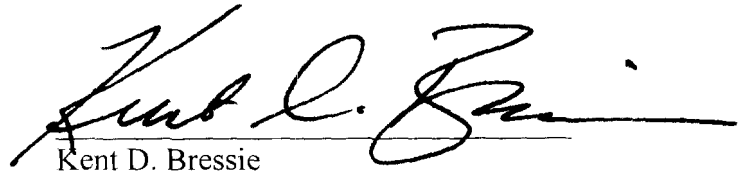
Adam Krinsky
Telecommunications Division
International Bureau
FEDERAL COMMUNICATIONS COMMISSION
2000 M Street, N.W., Room 812C
Washington, D.C. 20554

Jeanne Gellman
Telecommunications Division
International Bureau
FEDERAL COMMUNICATIONS COMMISSION
2000 M Street, N.W., Room 894
Washington, D.C. 20554

International Reference Room
International Bureau
FEDERAL COMMUNICATIONS COMMISSION
2000 M Street, N.W., Room 102
Washington, D.C. 20554

Charles C. Hunter
Catherine M. Hannan
HUNTER COMMUNICATIONS LAW GROUP
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

International Transcription Services
1231 20th Street, N.W.
Washington, D.C. 20036



Kent D. Bressie